IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

Sanjay

Vs.

State

****

S.B. CRIMINAL MISC.PETITION NO.1567/2006

u/S. 482 Cr.P.C.

******

Date of Order:- **23/8/2006.**

P R E S E N T

HON'BLE MR.JUSTICE HARBANS LAL

Mr. Amir Aziz for the petitioner.
Mr. Arun Sharma P.P. for the State.

****

BY THE COURT:-

This petition under Section 482 Cr.P.C. seeks quashing of the order dated 22/7/2006 passed by the learned Additional Chief Judicial Magistrate, Sawai Madhopur in Cr.Case No.183/06 for offences under Sections 147, 323, 341, 327, 395 and 427 I.P.C. vide which the application filed by the petitioner under Section 167 read with Section 437 Cr.P.C. has been rejected.

2) Learned counsel for the petitioner has contended that the F.I.R. was lodged on 14/5/2006 and he was arrested on 17/5/2006. He filed an application for bail under Section 167(2) Cr.P.C. read with

Section 437 Cr.P.C. before the learned court below on 18/7/2006 after the expiry of the period of 60 days from the date of his arrest. Challan was filed on 21/7/2006 for the above offences. His contention is that the case was initially lodged for the offence punishable with imprisonment of less than 10 year and the co-accused were granted bail on 12/6/2006 by the learned Sessions Judge and the bail application of the petitioner was rejected vide the same order. Lateron offence under Section 395 IPC was aided by the police save their skin as it had failed to file charge-sheet within the prescribed period of 60 days from the date of arrest of the accused-petitioner and further to deprive the petitioner of the benefit of bail under Section 167(2) Cr.P.C.

3) Arguing the case on merits he has further submitted that the petitioner is entitled to bail on the principle of parity because out of the list of cases registered against him he has been acquitted in 11 cases. Learned counsel has referred to **Hussainara Khatoon & Ors. Vs. Home Secretary, State of Bihar, Patna- [(1980)1 SCC 108, Aslam Babalal Desai Vs. State of Maharashtra- [AIR 1993 SC 1], Mantoo Majumdar & another Vs. The State of Bihar- [AIR 1980 SC 847, Rajveer Vs. State of Rajasthan- [2005(1) RCC 278], Hari Kishan Vs. State of Rajasthan- [2005(1) RCC 282], Raghubir Singh & Ors. Vs. State of Bihar- [AIR 1987 SC**

149] and **Raju Nayak Vs. State of Rajasthan- [1991 RCC 377.**

4) Learned Public Prosecutor has vehemently opposed the petition. He has submitted that simply because the co-accused has been wrongly granted bail the petitioner does not become entitle to bail on this ground alone. This apart, the case of the present petitioner is distinguishable from the case of the other accused-persons against whom the lesser number of cases are said to be pending. He has also submitted that the allegation that the offence under Section 395 IPC has been aided subsequently with a view to deprive the petitioner of benefit of bail under Section 167(2) Cr.P.C. is not well founded. This Court may look into the FIR and other materials collected during the investigation to ascertain as to whether an offence under Section 395 IPC is prima-facie disclosed on the basis of the allegation made in the FIR and the materials collected during the investigation. According to him, from the allegation in the FIR and the materials collected in support thereof during the investigation the offence under Section 395 is not only disclosed right from the beginning of lodging of the FIR but is prima-facie supported also. The police ought to have registered the case for dacoity as well but that has not been done and simply because the S.H.O. Or the Investigating Officer has failed to do so this would not entitle the accused to bail under the provisions of Section 167(2) Cr.P.C.

5) I have carefully considered the respective submission made at the bar and have perused the case diary as well as the authorities cited at the bar.

6) The authorities referred to above are clearly distinguishable on facts and in none of these authorities the controversy involved in the present petition has been dealt with or decided. Therefore, these authorities are of no avail to the petitioner in the instant case. Admittedly, in the instant case charge-sheet has been filed within 90 days of arrest of the petitioner and on the facts alleged an offence under Section 395 IPC is prima-facie made out. So, Section 167(2) Cr.P.C. proviso (a)(i) would be applicable in this case and, therefore, no case of grant of bail to the petitioner under Section 167(2) Cr.P.C. is made out. The petitioner having been declined bail by the learned Sessions Judge on merits and no case for grant of bail having been made out before me on merits. Hence, this petition deserves to be dismissed.

7) Learned Public Prosecutor has rightly contended that a bare perusal of the FIR and the other materials collected during the investigation makes it abundantly clear that the offence under Section 395 IPC is made out from the very beginning and it cannot be said that this Section has been aided in order to deprive the petitioner of the benefit of bail provided under Section 167(2) Cr.P.C. It is true that some of

the co-accused persons have been enlarged on bail by the learned Sessions Judge in this case but the bail application of the petitioner has been rejected on merits vide the same order. There is no cogent reason to take a different view in the matter. It is now well settled that this Court can grant bail to an accused person who has been declined bail by the learned court below after giving cogent reasons for taking a different view.

Consequently, this petition under Section 482 Cr.P.C. being devoid of merit and substance is hereby dismissed.

(HARBANS LAL), J.

anil/-